

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**TERRY WASHINGTON, 04-B-2200,**

**Petitioner,**

**-v-**

**10-CV-563(Sr)**

**N. BEZIO, SUPERINTENDENT,<sup>1</sup>**

**Respondent.**

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**DECISION AND ORDER**

Presently before the Court is petitioner's motion to stay his habeas corpus petition (Dkt. #7) so as to allow him to exhaust his ineffective assistance of appellate counsel claim, which was asserted in Ground Two of the petition (Dkt. #1, ¶12(B)). The instant motion to stay, filed August 26, 2010, states that petitioner filed an application in the Appellate Division, Fourth Department for a writ of error coram nobis with respect to the alleged ineffective assistance of appellate counsel issue, and petitioner attached to the instant motion a letter from the Appellate Division, Fourth Department, dated August 2, 2010, acknowledging receipt of his coram nobis motion papers. Dkt. #7,p.3; see *also* State Court Records filed Sept. 2, 2010, Appendix H

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<sup>1</sup> Petitioner has named as the respondent herein, the Superintendent of the Great Meadow Correctional Facility, the facility at which he was incarcerated at the time the petition was filed. The correct respondent for a § 2254 habeas proceeding is the name of the authorized individual having custody of the petitioner. 28 U.S.C. § 2243. Given that petitioner is now incarcerated in the Cossackie Correctional Facility, the correct respondent would be the Superintendent of that facility. In light of petitioner's *pro se* status and the fact that this in no way will prejudice respondent, and in the interests of court efficiency, the Court will deem the petition amended to change the name of respondent to the Superintendent of the Cossackie Correctional Facility.

The Clerk of the Court is directed to terminate N. Bezio, Superintendent, as respondent, add Superintendent of the Cossackie Correctional Facility as the new respondent, and revise the caption of this action accordingly.

(Petitioner's Motion for a Writ of Error Coram Nobis) and I (People's Coram Nobis Opposition Affirmation).

Petitioner's coram nobis application was summarily denied by the Appellate Division, Fourth Department on October 1, 2010, *People v. Washington*, 77 A.D. 3d 1456, 908 N.Y.S.2d 382, and the New York Court of Appeals denied petitioner's motion for leave to appeal on February 22, 2011 (Certificate Denying Leave). Because petitioner exhausted his state court remedies with respect to the ineffective assistance of appellate counsel claim, the Court finds that his request for a stay must be denied as moot. See *Davis v. Graham*, 06-CV-6569T, 2010 U.S. Dist. LEXIS 13693, at \*7 (W.D.N.Y. Feb. 17, 2010) (motion to stay habeas petition to allow petitioner to return to state court to exhaust ineffective assistance of appellate counsel claim rendered moot by Appellate Division's summary denial of petitioner's application for coram nobis relief).

Within 60 days of receipt of this Decision and Order, the petitioner may file a reply to the response filed by respondent on August 31, 2010 (Dkt. #9).

**SO ORDERED.**

Dated: Buffalo, New York  
March 22, 2011

s/ H. Kenneth Schroeder, Jr.  
**H. KENNETH SCHROEDER, JR.**  
**United States Magistrate Judge**